

REMARKS

Claims 1-35 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-8 of U.S. Patent No. 6,126,329 (hereinafter "U.S. Patent '329").

Claims 24-29 are being cancelled because they are not patentably distinct from Claims 2-7 of U.S. Patent '329.

A Terminal Disclaimer in accordance with 37 C.F.R. § 1.321(c) is co-filed herewith to overcome the double patenting rejection. The instant application is a continuation of U.S. Patent '329 initially owned by Rational Software Corporation. U.S. Patent '329 and the instant application are currently owned by International Business Machines Corporation by virtue of an assignment recorded at Reel 014369/Frame 0953 on August 12, 2003 in the parent application. Acceptance is respectfully requested.

By filing the Terminal Disclaimer, Applicants do not acquiesce to the assessment of the pending application Claims 1-35 being an obvious variation from the U.S. Patent '329 claims.

Claims 1-2, 18-19, 30 and 32 have been rejected under 35 U.S.C. §102 (b) as being anticipated by Dawkins et al. According to Dawkins et al. "The assembly language code of an application program whose execution is to be simulated is analyzed by a preprocessor to determine its basic block structure." Moreover, "the basic block analyzer also computes estimates for the execution time of each basic block on a processor in a simulated system and inserts instructions at the beginning of each basic block that cause a timing variable to incremented by an amount equal to the estimated execution time for that block. When the modified program is executed under simulator control this timing variable accumulates an estimate of the execution time for the program." (Dawkins et al. page 237, middle of left column to top of rightside column). In sum, Dawkins et al. addresses basic block time profiling only (i.e., estimated execution times of blocks).

On the other hand, base Claims 1, 18, 30 and 32 of the present application recite and address function entry and exit profiling. Function entry profiling code indicates "where the function was called from, to enable compiling second order or higher order timing statistics." See Specification page 5, line 38 to page 6, line 3 as originally filed. Function exit profiling code

“passes profiling information ... back to the caller.” See Specification, page 6, lines 33-35. In addition, Claims 1, 18, 30, and 32 claim profiling at the function level whereas Dawkins et al. disclose time profiling at the basic block level. Dependent Claims 2 and 19 follow from respective base Claims 1 and 18.

Thus, the present invention of Claims 1-2, 18-19, 30 and 32 are not anticipated by Dawkins et al. and the rejection under § 102 should be withdrawn. As such Claims 1-2, 18-19, 30 and 32 are believed to be patentable over the cited and prior art.

Claims 3-17, 20-29, 31, 33-34 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Dawkins as applied in Claim 1 and further in view of Pettis et al. Pettis et al. disclose the following: “the linker sees all direct calls between the various code subspaces. For each such call from one subspace to another, the linker was modified to drop down a stub between the caller and callee to count the number of control transfers.” See Pettis et al. page 17, last half of § 3.1. Pettis et al., however, do not teach or suggest, and thus do not add to Dawkins et al., the placement of function entry profiling code and function exit profiling code as claimed in base Claims 1, 18, 22 and 23. Furthermore, Pettis et al. do not teach or suggest function profiling code to determine an execution time for a particular call to a function as claimed in base Claim 18 and lacking in Dawkins et al. Thus, no combination of Dawkins et al. and Pettis et al. would make the present invention as now claimed in base Claims 1, 18, 22 and 23 obvious to a person having ordinary skill in the art.

Since Claims 3-17, 30, and 31 depend from independent Claim 1, they are likewise nonobvious and hence patentable over the cited and prior art. Similarly, since Claims 20 and 21 depend from base Claim 18 and Claims 33 and 34 depend from base Claims 22 and 23 respectively, each of these claims should also be allowable for at least the same reasons as above. Claims 24-29 are now cancelled.

Claim 35 has been rewritten in independent form and recites the step of "adding function profiling code" as argued above. Further Claim 35 recites "...said profiling data including self+descendants times for the functions" which neither Dawkins et al. nor Pettis et al. address. As such, no combination of Dawkins et al., and Pettis et al. make obvious the present invention of Claim 35 as now amended.

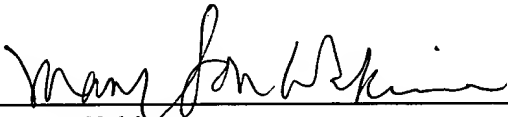
Accordingly the rejection under 35 U.S.C. § 103 is believed to be overcome. Acceptance toward allowance of Claims 3-17, 20-23, 31 and 33-35 as now amended is respectfully requested.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims pending with entrance of this amendment (i.e., Claims 1-23 and 30-35) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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